**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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| **AT&T SERVICES, INC.**<br>**Respondent**<br>**and**<br>**VERONICA ROLADER, AN INDIVIDUAL**<br>**Charging Party.** | **Case No. 07-CA-228413** |

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**COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO/CLC ("CWA") REPLY TO GENERAL COUNSEL'S OPPOSITION TO CWA'S MOTION TO INTERVENE AND MOTION TO REMAND AND REOPEN THE RECORD**

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Pursuant to Section §102.24(c) of the Board's Rules and Regulations, Communications Workers of America, AFL-CIO/CLC (hereinafter "Union" or "CWA") hereby submits its Reply to Counsel for the General Counsel's Opposition to CWA's Motion to Intervene and Motion to Remand and Reopen the Record.

Date: September 1, 2020

Respectfully submitted,

*s/ Matthew R. Harris*

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**BRIEF IN REPLY**

On August 26, 2020, counsel for the General Counsel ("GC") filed an Opposition to CWA's Motion to Intervene. The GC asserts that CWA's Motion should be denied because "simply being affected, or having the potential to be affected by the outcome in this case, does not rise to the level of a denial of due process . . ." (GC Brief p. 1) Secondly, the GC argues that CWA's Motion is untimely because the Board's Rules and Regulations provide for intervention only "before the hearing begins or while the hearing is in progress." (GC Brief p. 3, citing Section 102.29 of the Board's Rules and Regulations)

Similar to the Respondent, the GC fails to address the central argument contained in CWA's Motion. Rather, the GC points out that a majority of Board Members in *The Boeing Company*, 366 NLRB No. 128 (2018) concluded that a union did not demonstrate a valid basis for intervention in that case. (GC Brief p. 1) The GC overlooks the fact that the Union cited to the *Boeing* case only insofar as the dissenting members referenced *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197 (1938). (*See* Union Mtn. p. 6) As has been noted, the Supreme Court, on facts similar to those in the instant case, concluded in *Consolidated Edison* that the "[Union] and its locals contend that they were indispensable parties and that in the absence of *legal* notice to them or their appearance, the Board had no authority to invalidate the contracts. The Board contests this position . . . We think that the [Union] and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside." (emphasis added) (citations omitted) *Id.* at 232. *No party, including the GC, has properly addressed the applicability of Consolidated Edison.*

Here, the GC names CWA in the underlying Complaint and seeks to eliminate provisions of a collective bargaining agreement held by CWA without a hearing, without formal notice to

CWA and without the opportunity for the Union to be heard. Should the Board proceed in this manner, it would be difficult to imagine a more egregious violation of due process.

The GC further argues that CWA Local 4009 entered into a settlement in Case 07-CB-227560. The GC therefore concludes that CWA, the International, (the Movant) therefore has no legal interest in this case. CWA, the International, is the party to the collective bargaining agreement at issue, not CWA Local 4009. It is CWA, the International, which seeks intervention in this matter. CWA's local affiliates, including Local 4009, are legally distinct entities. *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 217 (1979); *Coronado Coal Company v. United Mine Workers*, 268 U.S. 295, 304 (1925). In fact, when courts have examined the relationship between the International and its local affiliates, they have found the two to be separate and autonomous. *Burrell v. Henderson*, unreported, No. C2-02-CV-1119, slip op. at *2-3 (S.D. Ohio November 11, 2004) (holding "The [CWA] is a national union; [CWA Local 4310] is a separate and autonomous affiliated Local Union."). Further, CWA's locals are explicitly prohibited from entering into contractual agreements on behalf of CWA, the International. For example, CWA's Constitution, which is publicly available online, clearly sets forth: "No Local shall be authorized to make contracts or incur liabilities for the Union." (Article XIII, Section 10) Though it should be clear from CWA's filings, it is *CWA the International* alone that seeks intervention in this case as holder of the CBA at issue.

The GC also cites *GranCare, Inc*., 323 NLRB 1053 (1997). *GranCare* involved an employer's unlawful withdrawal of recognition from an incumbent "Employee Council" in favor of an incoming union. *Id*. at 1053. The Employee Council was effectively ousted pursuant to a non-Board settlement reached between the incoming union and the employer. *Id*. The ousted Employee Council filed a charge against the employer. *Id*. The incoming union sought to

intervene, contending the resolution of the case would affect the enforceability of the non-Board settlement reached with the employer-respondent relating to the ousting of the Employee Council. *Id*. The Board agreed with the regional director's refusal to permit intervention, concluding the non-Board settlement relied upon by the incoming union was "essentially [] an agreement to violate Section 8(a)(5)." *Id.* at 1054.

Here, CWA seeks intervention in its capacity as holder of a CBA which stands to be heavily impacted by the outcome in this case. Unlike in *GranCare*, there is no contention here that the CBA as a whole is improper. Moreover, as it stands today, the contested provisions at issue in the instant case are perfectly lawful pursuant to the Board's holding in *Frito Lay*, *Inc*., 243 NLRB 137 (1979). Hence, *GranCare* is inapposite.

With respect to the GC's argument regarding the timeliness of the Union's Motion, the Board's Rules and Regulations, Section 102.29 provides in pertinent part,

> Any person desiring to intervene in any proceeding must file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion must be filed with the Regional Director issuing the complaint; during the hearing, such motion must be made to the Administrative Law Judge. Immediately upon filing a written motion, the moving party must serve a copy on the other parties.

The GC contends that Section 102.29 provides that a motion to intervene may *only* be filed before or during a hearing. Even assuming, arguendo, the GC's argument is correct, no hearing was ever held in this matter. Rather, the GC, Respondent and the National Right to Work Foundation (on behalf of CP) entered into a stipulated record naming CWA and seeking to invalidate portions of a CBA held by CWA, which, as of the date of this filing, are perfectly lawful. The GC and the parties did this without legal notice to CWA, and without affording CWA any opportunity to be heard in this case.

The GC's argument in this respect cuts against the plain language of Section 102.29, which provides, quite clearly, "*Any person desiring to intervene in any proceeding must file a motion in writing* . . ." (emphasis added) The remaining language, as the GC correctly points out, uses the term "hearing," in reference to the treatment of motions to intervene made before or during *hearings*. The use of the term "proceeding" and the broad construction of the first sentence of Section 102.29, require that the Board permit intervention in a *proceeding* at any time if just and proper.

Moreover, the procedural facts of this case highlight the problematic nature of the GC's argument. Under the GC's construction of 102.29, the GC and like-minded parties (as is the case here) could fast-track a case to the Board via stipulated record and without a hearing; the Board could issue a decision; and affected parties would be completely deprived of any opportunity to intervene because, under the GC's construction of 102.29, a *hearing* was never conducted. This certainly cannot be the intent of Section 102.29.

Further, the Board and GC should be wary of this manner of conduct. Should the Board proceed on this procedural record, in the future an alternatively constructed Board and an alternatively minded GC could, for example, use the same methods to invalidate a broadly constructed forced arbitration provision or an overly intrusive management rights clause contained in a CBA, all without ever affording an employer input.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Pursuant to the Board's Rules and Regulations the undersigned hereby certifies that a copy of the foregoing was filed electronically with the Board on September 1, 2020. A copy of the same was submitted to the following individuals via email the same day.

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